

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-126-E – ORDER NO. 2004-505  
OCTOBER 18, 2004

IN RE: Proceeding to Review the Gas Supply	)	ORDER DENYING
Agreement between South Carolina Electric	)	MOTION TO COMPEL
& Gas Company and SCANA Energy	)	AND DENYING
Marketing, Inc.	)	MOTION FOR
	)	CONTINUANCE OF
	)	HEARING

In Docket No. 2004-2-E concerning the annual review of base rates for fuel costs of South Carolina Electric & Gas Company (“SCE&G”), the Public Service Commission of South Carolina (the “Commission”), upon Motion of the Consumer Advocate for the State of South Carolina (“Consumer Advocate”), granted a separate proceeding to review the gas supply agreement between SCE&G and SCANA Energy Marketing, Inc. (“SEMI”). The Commission further ordered that the proceeding should be noticed and scheduled for completion as soon as possible and that SCE&G should provide the parties pursuant to appropriate protective agreements, if necessary, all contracts and agreements that have been executed among the participants to this contractual transaction and which deal with the supply of gas to the Jasper facility.

The matter presently before the Commission is a Motion to Compel and Motion for Continuance of Hearing filed by the Consumer Advocate on May 7, 2004. By its Motion, the Consumer Advocate states that it received the Commission’s scheduling

letter in this docket on May 3, 2004. The scheduling letter requires SCE&G testimony to be filed on or before May 11, 2004, and all other parties' testimony to be filed on or before May 25, 2004. The scheduling letter also sets the hearing in this proceeding for June 8, 2004. The Consumer Advocate also advises the Commission that on May 5, 2004, the Consumer Advocate received eight contracts from SCE&G. According to the cover letter accompanying the contracts, four remaining contracts and assignment of one of those contracts would be provided to the parties and filed with the Commission once confidentiality agreements were received by SCE&G. Also, on May 5, 2004, the Consumer Advocate e-mailed and faxed to SCE&G's attorney the confidentiality agreement including the Consumer Advocate's signature. On May 6, 2004, SCE&G delivered to the Consumer Advocate a copy of one contract (entitled, Natural Gas Sales Agreement between BG LNG Services, LLC and SEMI dated December 19, 2003). According to the cover letter attached to that contract, SCE&G filed an un-redacted copy of the contract with the Commission under seal, and the Consumer Advocate and the Commission Staff received redacted copies of the contract. The Consumer Advocate states that due to the redactions in the contract not a single term of the contract was disclosed which allows any meaningful review of the Jasper Plant transaction subject to the instant docket. Also on May 6, 2004, the Consumer Advocate's attorney received an e-mail from SCE&G's assistant general counsel advising that the just delivered contract was the only one for which SCE&G requested confidential treatment and that the remaining contracts were being filed under separate cover. The additional contracts were delivered on the morning of May 7, 2004. The Consumer Advocate also advises the

Commission that on May 6, 2004, he filed his first set of interrogatories on SCE&G. The Consumer Advocate also advises that additional discovery will be needed and as the issue of disclosing the contracts is pending, the Consumer Advocate believes that discovery may not be completed prior to May 25, 2004, when the Consumer Advocate must prefile his testimony. Therefore, the Consumer Advocate requests that the Commission issue an order compelling production of the un-redacted December 19, 2003 contract between BG LNG Services, LLC and SEMI and to continue the hearing scheduled for June 8, 2004, until such time as the discovery dispute is resolved and adequate time for discovery has been provided.

On May 11, 2004, SCE&G filed a Reply to the Consumer Advocate's Motion to Compel and Motion for Continuance of Hearing. SCE&G acknowledges that it has provided eight contracts to the Consumer Advocate and that later SCE&G received a confidentiality agreement from the Consumer Advocate. Further, on May 6 and 7, 2004, SCE&G states that it provided six additional contracts and four letter agreements to the Consumer Advocate, one of which was redacted for reasons of commercial sensitivity.

As to the Motion to Compel, SCE&G states that the notice of filing and hearing in this docket was issued on April 30, 2004. Further, within five business days of that notice, SCE&G obtained and made available to the Consumer Advocate and the Commission Staff all contracts subject to the relevant motion and directive of the Commission to provide the contracts. SCE&G states that it has provided the parties thirteen un-redacted contracts, four letter agreements, and one redacted contract. Further SCE&G states that of these contracts, only one involves SCE&G, that is, the contract

between SCE&G and SEMI dated April 2, 2004, and previously produced in Docket No. 2004-2-E (“the SCE&G Fuel Case”). The other contracts are between entities not before the Commission which are either regulated by the Federal Energy Regulatory Commission (“FERC”) or are unregulated commercial entities.

The redacted contract, which is the subject of the Consumer Advocate’s Motion to Compel, is a contract between SEMI and BG LNG Services, LLC. SCE&G has filed with the Commission in this proceeding a copy of this contract under seal and has provided redacted copies of the contract to the Consumer Advocate and the Commission Staff. SCE&G states that the production of the contract is being handled in this manner in order to provide information desired by the Commission while protecting the contents of a commercially sensitive instrument. SCE&G states that the contracts of this contract are acutely sensitive and that public dissemination of the information contained therein could be commercially damaging to SEMI and BG LNG Services, LLC.

SCE&G further states that the relevant regulatory inquiry by the Commission relates to the April 2 contract by and between SCE&G and SEMI and the prudence of that contract in the context of whatever market alternatives exist for SCE&G. That is, whether the gas procurement option selected by SCE&G is prudent and in the best interest of SCE&G’s ratepayers in comparison to available alternatives. SCE&G also submits that commercial contracts underlying SEMI’s procurement of gas are not relevant to the inquiry in these proceedings. SCE&G states that the Consumer Advocate should not be permitted to broaden the scope of the inquiry in these proceedings beyond what the Commission has ordered. SCE&G suggests that should the Commission wish to

make inquiry regarding the relationship between SCE&G and SEMI that S.C. Code Ann. Section 58-27-2090 provides the Commission with a structure for statutory audit inquiry which would not put the entities at commercial risk in an adversarial adjudicatory proceeding such as the present docket. Additionally, the Commission in its Order No. 92-931, Docket No. 89-230-E/G, dated November 11, 1993, considered the nature of such inquiries and the restriction of such inquiries to the Commission and its Staff because of the commercially sensitive nature of such records, particularly those of a non-regulated affiliate. In Order No. 92-931, the Commission established a procedure to be followed in any such audit inquiry. As unregulated companies, the Commission cannot financially protect SEMI and other upstream companies against commercial risks and earnings or losses incurred in connection with such risks. Accordingly, the protections of Order No. 92-931 are necessary and appropriate.

As to the request for continuance, SCE&G asserts that the Consumer Advocate has three weeks to file discovery requests with SCE&G. Under this three week calculation of time, SCE&G is allowed to prescribe ten days for response to discovery requests. Additionally, the Consumer Advocate has been afforded an opportunity for examining the Jasper contract since April 5, 2004, and to conduct discovery regarding that contract prior to and in preparation of the hearing in Docket No. 2004-2-E.

SCE&G also filed a Motion for an extension of time for filing testimony. According to SCE&G, its prefiled direct testimony is due on Tuesday, May 11, 2004. SCE&G is finalizing the preparation of its testimony. SCE&G notes that from the date of the public notice of the proceeding in this docket that it was afforded six business days to

complete its testimony. The Consumer Advocate and other parties have sixteen days to complete their direct testimony. SCE&G is however prepared to meet the Commission's deadlines. The Consumer Advocate has moved for a continuation in this case and that SCE&G believes that the Commission will not address the Consumer Advocate's Motion until the Commission meets on Wednesday, May 12, 2004. SCE&G states that it would be unfair and inequitable to file its testimony on May 11 when the Commission may grant the Consumer Advocate's Motion for Continuance on May 12. In such a case, all of the testimony of SCE&G would be available to the Consumer Advocate for an unknown period of time. But in any event, a substantially disproportionate amount of time to the time which SCE&G would have to review any testimony filed by the Consumer Advocate. SCE&G states that should the Consumer Advocate's Motion for Continuance be granted that it is assumed that the Commission would issue a revised scheduling order. However, if the Consumer Advocate's Motion for Continuance is denied, SCE&G is prepared its testimony on May 13, 2004. SCE&G advises the Commission that counsel has conferred with counsel for the Consumer Advocate and the Commission Staff who have no objection to this request.

As to SCE&G's Motion that it be granted a continuance in which to file its prefiled direct testimony, the Commission finds good cause to grant the continuance until such time as the Consumer Advocate's Motion to Compel and Motion for Continuance have been ruled upon. Therefore, SCE&G shall not be required to file its direct prefiled testimony on May 11, 2004, but will be informed as to the appropriate date on which to file its direct testimony.

As to the Consumer Advocate's Motion to Compel, the Commission finds that the Motion to Compel filed by the Consumer Advocate should be denied. The contract between SEMI and BG LNG Services, LLC relates to SEMI's gas supply from which SEMI may or may not provide gas to the Jasper Plant. Further, the Commission realizes the sensitive nature of this contract and recognizes that public dissemination of the information contained in the contract could be commercially damaging not only to SEMI but to BG LNG Services, LLC. Presumably SEMI and BG LNG Services, LLC arrived at the contract through arms-length negotiations. SEMI provides gas supplies to other entities other than SCE&G. Gas received by SEMI under this contract with BG LNG Services, LLC may or may not be used to fulfill the needs of SCE&G. Therefore, due to the commercially sensitive nature of this contract and the fact that the contract is between two entities neither of which is under the jurisdiction of this Commission, the Commission finds and concludes that the contract need not be provided to the parties in this case.

As to the Motion for Continuance filed by the Consumer Advocate, the Commission finds that the Motion should be denied. This proceeding was granted on request of the Consumer Advocate to allow the Consumer Advocate time to follow-up on an issue arising from SCE&G's fuel case. The Commission has granted additional time for the Consumer Advocate and other parties to inquire about the contract between SCE&G and SEMI regarding the gas supply to the Jasper Plant. The Commission finds and concludes that the additional time granted by the Notice of Filing is sufficient to allow the parties to inquire into the contract between SEMI and SCE&G. The initial

contract was provided on April 5, 2004, and while additional contracts have been provided recently the Commission believes that sufficient time has been provided for the parties to study the contracts and prepare for the proceeding scheduled for June 8, 2004.

IT IS THEREFORE ORDERED:

1. That the Motion for Continuance filed by the Consumer Advocate is hereby denied.
2. That the Motion to Compel filed by the Consumer Advocate is denied.
3. SCE&G is granted a continuance in which to file its direct testimony, and SCE&G shall be advised as to the appropriate date to file its direct testimony.
4. This Order shall remain in full force and effect until further of the Commission.

BY ORDER OF THE COMMISSION:

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/s/  
Randy Mitchell, Chairman

ATTEST:

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/s/  
G. O'Neal Hamilton, Vice Chairman

(SEAL)